IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 886 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESH B LIMBOCHA - Appellant(s)
Versus
RAMESH TULSIRAM MARATHA & 1 - Defendant(s)

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Appearance :

RULE UNSERVED for Appellant(s) : 1,(MR MUKESH R SHAH) for Appellant(s) : 1,MR RN SHAH for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MS RUPA RANE for MR SN SHELAT for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/01/2007

ORAL JUDGMENT

1. The original claimant has approached this Court to seek enhancement of the compensation awarded to him by the Motor Accident Claims Tribunal [Main], Kheda at

Nadiad in MACP No. 549 of 1985. The judgment and award are dated 18th October, 1988. The Claims Tribunal has granted compensation of Rs.31,280=00 together with running interest at the rate of 9% per annum from the date of the application till realization and also the proportionate costs thereon. The present appeal is filed on the ground that the compensation awarded by the Claims Tribunal is inadequate and it is required to be enhanced.

2. The accident in question giving rise to the present proceedings took place on 8th September, 1984 at about 8:45 p.m. The appellant was travelling by bus owned by respondent no. 2 and driven by respondent no. 1. He was proceeding to Dahod. The bus was plying between Ahmedabad and Bhopal. When the bus reached near Bhavans College on Umreth-Dakor Road, a truck came from the opposite direction. It is case of the appellant that respondent no. 1 did not slow down the bus and it dashed against the truck. As a result of the collision, the appellant received injuries on the right hand. He was immediately removed to Cottage Hospital at Dakor and subsequently he was transferred to SSG Hospital at Vadodara. During treatment, it was found that serious injuries were caused to the fingers of his right hand and his little finger was required to be amputated. He

remained in the SSG Hospital from 9th September, 1984 to 20th October, 1984 as indoor patient. He, therefore, filed petition under the provisions of the Motor Vehicles Act [hereinafter referred to as the "Act"] for claiming compensation of Rs.75,000=00.

3. Respondent no. 2 resisted the petition by filing written statement at Exh, 12, wherein the averments made in the petition were denied. It was also averred that the petition was bad for non-joinder of the parties since the driver, owner and the insurance company of the truck were not joined as party to the proceedings. It was also denied that respondent no. 1 namely the driver of the offending vehicle was responsible for causing the accident. The respondents tried to throw the blame on the truck driver. Respondent no. 1 adopted the written statement of respondent no. 2 by filing purshis at Exh. 11.

4. Before the Claims Tribunal, the appellant in his deposition has described in detail the manner in which the accident took place. He has deposed that it was respondent no. 1 who was solely negligent and rash in driving his vehicle and as a result of it, the accident occurred. As against that respondent no. 1 did not give

evidence and controvert the version of the accident deposed by the appellant. The Claims Tribunal has, therefore, accepted the version of the accident given by the appellant and has held respondent no. 1 negligent and responsible for causing accident. This finding has not been challenged by the other side either by filing substantive appeal or even cross objections in this appeal. It has, therefore, become final. I have also perused the discussion on it in the judgment and also the record and proceedings of the case and I am in complete agreement with the Claims Tribunal on this issue. The Tribunal has also held that respondent no. 2 was owner of the offending vehicle, namely the passenger bus and, therefore, it was vicariously liable to pay compensation to the appellant. This finding is also not challenged. Hence, it has become final.

5. The question that is to be considered here is whether the compensation granted by the Claims Tribunal can be said to be just and proper. I have heard Ms. Rupa Rane learned advocate for the respondents. She has submitted that the Claims Tribunal has properly assessed the amount of compensation by keeping in view the relevant factor and, therefore, there is no need to enhance the compensation. She has fully supported the

judgment of the Claims Tribunal.

6. I have perused the record and proceedings of the case. I have also carefully considered the submissions of Ms. Rane. To decide the question on adequacy of compensation it is necessary to see what type of injuries were suffered by the appellant. In his deposition the appellant has stated that he has sustained injuries on his right hand and also on the head. Initially he was taken to Dakor Hospital, but on the next date he was removed to SSG Hospital, at Vadodara. He was admitted as indoor patient. He remained in the hospital from 9th September, 1984 to 20th October, 1984 i.e., for 42 days as indoor patient. The medical record shows that he had sustained contused lacerated wound on right fore-head and also on right fore-arm. On 8th October, 1984, he was operated upon for skin grafting. He has sustained fracture of proximal phalanx on right ring and middle finger. His little finger of the right hand was amputated and second grafting was done at that place. It further appears that even after discharge from the hospital he was required to visit the hospital on two occasions for check-up. He had also taken physiotherapy treatment. Thus, he had suffered considerable pain and inconvenience. Dr. Harshad Patel who has been examined at

Exh. 27 has stated that there was deformity on the right hand and the ring of the middle finger had deviated laterally. He has further stated that there was loss of right little finger and there was second grafting on the area of dorsum of right arm. While assessing the disability Dr. Patel has stated that the right finger was contracted at proximal and inter phalangeal joint and no active extension was possible of right finger. According to him the right middle finger was contracted at TIP joint, the extension was restricted to 30° at TIP joint and 40° at PIP joint. Thus, the aforesaid narration about the medical evidence clearly shows that the injuries were quite serious and they had caused permanent disability also. Under the head of pain, shock and suffering, the Claims Tribunal had awarded a sum of Rs.15,000=00. But considering the fact that there was loss of little finger of the right hand and considerable restriction of the movement of other fingers, as also the hospitalization of long duration i.e. 42 days, during which he was operated upon and skin grafting was done, the amount awarded under the head pain, shock and suffering is on lower side. It is required to be enhanced to Rs. 25,000=00. Thus, under the head of pain, shock and suffering, the appellant is entitled to receive additional compensation of Rs.10,000=00.

7. Dr. Harshad Patel has stated that the appellant had suffered permanent disability in respect of the concerned need at 30%. However, in respect of the entire body the permanent disability was to the extent of 15%, The Claims Tribunal while assessing the future income or the earning capacity has taken into consideration this fact and has awarded Rs.13,500=00 under the head of loss of prospective income. In my view, the Claims Tribunal has awarded less amount under this head. The evidence of the appellant shows that he was having hair cutting saloon and according to him he was earning Rs.1,200=00 per month prior to the date of accident. However, with the injuries and the consequential disabilities suffered by him he was unable to carry on the said vocation fully. It clearly appears from the evidence of Dr. Patel as well as of the appellant that after the accident he was unable to hold the pair of scissors because of the deformity in the fingers and loss of little finger. Of course, it also transpires that he was able to hold the razor and do shaving. His evidence further shows that prior to the accident, he was earning about Rs.40/- to Rs.45/- per day, but after the accident, he was able to earn Rs.35/- to Rs.40/- per day. He has further stated that for hair cutting he had employed one person and he was paying him Rs.15/- to Rs.20/- per day. However, even according to the appellant himself, he had suffered loss of Rs.5/– to Rs.10/- per day. So far as the actual loss of income of

the appellant is concerned, on the date of the accident, the Claims Tribunal has determined at Rs.500=00 per month and it has awarded a sum of Rs.2,000=00 for actual loss of income. On the same basis, the Claims Tribunal has also worked out future loss of income by applying the multiplier of 15 and has determined it at Rs.13,500=00. The Claims Tribunal has not assigned any reason as to why it has reduced the monthly income of the appellant to Rs.500=00, which is less than even half of the income as stated by the appellant. Even by giving some concession to the exaggeration made by the appellant, the income could not be less than half and, therefore, the Tribunal ought to have assessed Rs.600=00 per month. Further one more important factor has been overlooked by the Tribunal is that the income of the appellant would not have remained static. He was aged 32 years at the time of accident. With the passage of time, the income would have increased. Hence, by adopting the formula laid down in the decision rendered by the Division Bench of this Court in the case of **Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Transport Service reported in 1999 (1)GLR pg. 388**, the prospective income can be determined at Rs.900=00 per month. Considering the disability at 15% the monthly loss can be assessed at Rs.135/- and the actual loss at Rs.1,620=00. The Claims Tribunal has applied multiplier of 15 and considering the age of the appellant it seems to be proper. Hence, the future loss

of income can be assessed at Rs.24,300=00. The appellant therefore, deserves additional compensation of Rs.10,800=00 under the head of loss of prospective income. So far as other amounts under different heads awarded by the Tribunal are concerned, by and large, the assessment is proper and I do not intend to enhance the same. Thus, considering the above discussion, the appellant is entitled to additional amount of Rs.20,800=00. The respondents are, therefore, directed to deposit the additional amount of Rs.20,800=00 towards the compensation in the concerned Tribunal, within a period of six months from the date of this judgment together with interest at the rate of 9% per annum from the date of the application till realization and the proportionate costs. Upon deposit of the amount, the Claims Tribunal shall hand over the same by A/c Payee cheque to the appellant after due verification. Since the appellant had remained unrepresented during hearing, the Claims Tribunal is directed to intimate him the result of the appeal and call upon him to collect the compensation awarded by the Court.

8. The result is that the appeal is partly allowed. R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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